

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.2554/2001

NEW DELHI THIS THE 29/10 DAY OF OCTOBER 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Mrs. Veena Khanna W/o Sh S S Khanna
H No. 2, Block No. 2
Vijay Nagar,
Delhi - 110009
2. Sh. Upendra Kishor S/o Sh. S R Singh
B 141, Moti Bagh I
New Delhi
3. Mrs. Durgesh Kumar S/o Sudhir Kumar
DG 897, Sarojani Nagar
New Delhi
4. Sh. Hari Dev, S/o Late Sh. G R Sharma,
100/H-33, Sector 3
Rohini, New Delhi
5. Sh. F C Sewan S/o Sh. Pyare Lal,
B3/3, Jeevan Jyoti Apartments,
Pitampura, New Delhi

.....Applicants

(By Sh. D R Gupta, Advocate)

VERSUS

1. Union of India through
The Secretary,
Min. of Finance, Department of Revenue,
North Block, New Delhi
2. The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi
3. The Chief Commissioner of Income Tax,
CR Building, IP Estate, New Delhi.

.....Respondents

(By Sh. Inderjeet Singh, Advocate)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Reliefs sought in this OA are as below:

- a) to allow the OA with costs;

(15)

-2-

- b) to declare that the vacancies pertain to the year 2001-2002 after region wise allocation on March 30, 2001;
- c) to quash the decision of the department by treating such vacancies retrospectively of the year 2000-2001;
- d) to declare that the applicants having qualified the examination held in May 2000 are eligible for consideration for promotion to the post of ITOs against vacancies which became available after region wise allocation 30.3.2001;
- e) to direct the respondents to convene review DPC to consider the applicants for promotion to the post of ITOs and if found suitable to promote them from the dates their immediate juniors have been promoted;
- g) any other order or directions which the Hon'ble Tribunal may deem fit and just and proper in the facts and circumstances of the case and to meet the ends of justice.

2. Heard Sh. D R Gupta learned counsel for the applicants and Sh. Inderjit Singh, learned counsel for the respondents.

3. All the five applicants are Income Tax Inspectors, who constitute the feeder cadre for promotion as Income Tax Officers, Group 'B', on seniority-cum-fitness basis, subject to their qualifying in the Departmental Examination. The applicants have been declared as passed in the Departmental Examination held in May, 2000, vide letter No. C II(Exam) Delhi V/ITO/Result/2000-01/3577 dated 27.3.2001 and accordingly qualified from May 2000. The applicants were thus qualified but were not considered for promotion by having been placed lower in the panel and ineligible for the vacancies of 2000-2001, which became available for being filled up only in 2001-02. Respondents wrongly treated the vacancies as belonging to 2000-01 and kept out the applicants from consideration. The vacancies which arose on restructuring plan, were notified by the Department of



16

Expenditure by Dy No. F-9708/JS (Per) 2000 dated 20.10.2000 and allocated regionwise by letter F No. 11013/3/98/Ad VI dated 30.3.2001. They became thus available for being filled up only after the end of March 2001, for which the cut off period for eligibility should have been fixed on 1.1.01 instead of 1.1.2000. By wrongly fixing the cut off date as 1.1.2000 seniors like the applicants who took the examination in May 2000 were eliminated from the eligibility for consideration for promotion as ITOs. Respondents had also allocated the vacancies retrospectively for 2000-01, when they in fact were available for filling up only after 30.3.01. In fact the DPC was held only on 18.6.2001. Allocation of the posts retrospectively was against administrative principles also. The respondents have worked out the vacancies of ITOs for 2000-01 as 1062 including those which are to arise on promotion to higher grades. This was clearly wrong. This was reflected in preparation of the panel for promotion also thus compounding the mistake. Letter dated 15.9.2000, issued by Chairman, CBDT made it clear that filling up of the posts was to be staggered in four phases during 2000-01 and 2001-02. Therefore anticipating 1062 vacancies which would have arisen only after the vacancies in the cadre of Chief Commissioners were filled up, was clearly in the wrong and against the Govt's instructions from time to time. Applicants representation for calculating the vacancies correctly placing them as having arises only in 2001-02 and fixing the cut off period on 1.1.01, did not evoke any favourable decision, leading to filing of this OA.

(12)

-4-

4. Grounds raised in the OA are as follows:-

- i) vacancies correctly pertained to 2001-2002;
- ii) vacancies which arose after March 2001, could have allocated for the earlier periods;
- iii) the applicants are entitled for consideration for promotion against the said vacancies on account of their seniority;
- iv) the cut off date for consideration should be 1.1.01 and not 1.1.2000.

The action of the respondents was clearly illegal and arbitrary and deserved to be quashed.

5. During the oral submissions, all the above points were forcefully reiterated by the learned counsel for the applicants Sh. D R Gupta who felt that the respondents have acted prejudicially against his clients and therefore desired the Tribunal's interference in the matter to render the applicants justice.

6. No counter affidavit has been filed by the respondents despite time being repeatedly granted. However, during the hearing Sh. Inderjit Singh learned counsel appeared before us for the respondents and submitted that the respondents have correctly and in strict adherence to rules and instructions have acted in this matter and that no interference by the Tribunal was called for. He could not, however, satisfactorily explain the reluctance/ refusal of the respondents to file their counter to the O.A. , indicating their stand.

7. We have carefully considered the matter. As noted above we did not have the benefit of assistance of any counter affidavit from the respondents but only of the none- too -helpful - an oral submission by their learned

-5-

counsel. Our decision therefore is on the facts brought out in the OA and our appreciation of the facts and the law on the points.

8. All the five applicants are Income Tax Inspectors, who have become eligible for consideration of promotion as ITOs by completing the requisite period of service and passing the requisite examination. Their names also have been placed in the relevant list, circulated vide F. No. P-314/5/DPC/ITO/Eligible List/2001-02/681 dated 25.5.01. However, according to them they have not been promoted as ITOs, by wrong computation of vacancies, yearwise. Perusal of the impugned letter dated 18.6.2000, under which promotion have been ordered shows that the said list includes persons, who are placed below the applicants in the gradation list. Obviously therefore the applicants have been sidelined for promotion, which have been given to those below them in the eligibility zone. In the respondents organisation i.e. Income Tax Deptt. a number of new vacancies have been identified on account of restructuring scheme, which was approved by the Cabinet on 31.8.2000, and communicated on 6.9.2000. The posts were identified vide Deptt. of Expenditure Diary No. F-9708/JS(Per)2000 dated 20.10.2000 and the posts were allocated as per F No.11013/3/98/Ad VI dated 30.3.2001. Therefore while the scheme was approved in principle by the Govt. in late 2000, the posts ^{themselves} became available for being filled up only after 30.3.2001 i.e. w.e.f. financial year 2001-02, and not before that. In other words, all those who became eligible for consideration for promotion from 2001-02 would have to be considered basing the relevant cut off date. The said date is to be

-6-

reckoned as 1.1.01 and the cases of all those who have become eligible the said date merit consideration. It is however, noticed ~~that~~ the respondents have fixed the cut off date on 1.1.2000, and ~~excluded~~ ~~omitted~~ the applicants from consideration, for which there is no sanction at all. Vacancies identified sanctioned and allocated to be filled up after 30.3.2001, can only be shown as pertaining to 2001-02 and not earlier as posts are created/sanctioned only prospectively. Completion of the requisite experience in the feeder cadre and passing of the examination would render a person eligible for consideration, subject of course to his position in the gradation list, keeping the above in mind, the applicants' cases should also have been considered legally. Respondents have declined to do so by showing the vacancies as pertaining to 2000-01 and keeping the cut off date as 1.1.2000, as the applicants have qualified in the promotion examination only in May 2000. Nothing can be further from legal and proper than this decision of the respondents. Having cleared the examination in May 2000, the applicants have become eligible for consideration for promotion and have regained their regular placement in the gradation list, above their natural juniors, who had cleared the Departmental Examination earlier. Only if they had cleared the Deptt. Examination before the cut off date for arriving at the eligibility for consideration i.e. 1.1.01, could they have been denied consideration. As in fact all the applicants have become eligible, before the cut off date, they should have been considered and only after considering their cases, those of their juniors should have been taken up for consideration. Respondents have failed to do so and acted improperly and incorrectly and at the cost of the applicants. Their action has no

sanctioning law and has to be interfered and the right of the applicants vindicated. This could be done by holding a review DPC for considering the case of the applicants for promotion, treating the relevant vacancies as having become available for being filled up after 30.3.2001 and keeping the cut off date as 1.1.01 as against 1.1.2000, as incorrectly done by the respondents. The applicants also have to be compensated for being drawn to this litigation by the intransigent attitude of the respondents.

9. In the above view of the matter, the OA succeeds and is accordingly allowed. The respondents are directed to consider the case of the applicants by a review DPC for promotion to the grade of Income Tax Officers , against the vacancies created under the restructuring scheme treating them as having arisen after 30.3.2001 and thus pertaining to 2001-02 and treating the cut off date for determining the eligibility date as 1.1.01 instead of 1.1.2000, from the dates on which their juniors have been promoted as ITOs and if found fit, promote them on the said date with all consequential benefits including seniority, fixation of pay along with arrears of pay and allowances. This shall be done within three months from the date of receipt of a copy of this order. Respondents shall also pay to the five applicants Rs. 2000/- (Rupees two thousand only) each towards cost. No further notice to the affected parties, if any is felt necessary as on 28.9.2001, itself the Tribunal had directed that the promotion ordered on 18.6.2001, was subject to the final disposal in this OA.



10. Before parting with this, we would also like to express our deep anguish and disappointment at the totally lackadaisical approach adopted by the respondents in the matter. Respondents were given on 28.9.2001 four weeks time to file their counter before 19.11.2001. This was extended upto 18.12.2001 on 19.11.2001, by another week on 16.1.2002, by still two more weeks' time as last opportunity on 19.2.2002. On 18.4.2002, once again the last chance to file the reply in two weeks was given. On 24.8.2002, at the request of the learned counsel for the respondents three weeks period was granted to the respondents to file the reply on payment of cost of Rs.500/-. Nothing happened on subsequent four occasions of 3.7.2002, 15.7.2002, 5.8.2002, 12.8.2002 also though the learned counsel for the respondents were present. Thus in spite of the fact that respondents have been provided more than half a dozen opportunities they had not bothered to respond to the Tribunal's notice, file their counter affidavit and provide their assistance to the Tribunal for adjudicating the issue. It is surprising that a responsible arm of the Union of India - Deptt of Income Tax having its offices well within the limits of Delhi and in fact within a distance of two kms from the Tribunal Office could not or did find time to file their reply to a matter concerning themselves and their staff. This, to say the least is totally disconcerting and has placed the organisation is not an eminable light. We leave it at that. In the circumstances we direct that a copy each of this order, be endorsed to Secretary to the Govt of India, Deptt. of Revenue Ministry of Finance, Chairman, Central Board of Direct Taxes and Chief Commissioner of Income Tax, Delhi -110001 by name so that

[Signature]



they are made aware of the manner in which such important matters are handled in the organisation for taking remedial action, if any deemed fit by them.

S. Raju

(Shanker Raju)
Member (J)

(Govindam S. Tampi)
Member (A)

Patwal/